

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7495 of 1998

with

SPECIAL CIVIL APPLICATION No 8295 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

NAJUMUDDIN GULAMALI KAGZI

Versus

COLLECTOR OF SURAT

Appearance:

MR RN SHAH for Petitioner
Ms AMY YAGNIK, AGP for Respondent No. 1
MRS KETTY A MEHTA for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/02/99

ORAL JUDGEMENT

Rule. Ms Amy Yagnik, learned AGP waives service of Rule for the Special Secretary/Additional Chief Secretary (Appeals) in the Revenue Department of the State Government and the Collector, Surat. Mrs KA Mehta, learned counsel for Kantilal Chunilal Shah and Mr KS Jhaveri, learned counsel for respondent No. 3 in Special

Civil Application No. 8295 of 1998 waive service of Rule for their respective clients.

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#. In these petitions under Articles 226 and 227 of the Constitution, the petitioners have challenged the judgment and order dated 15.6.1998 passed by the Additional Chief Secretary (Appeals) in the Revenue Department of the State Government in revision application No. 7/97 under Section 211 of the Bombay Land Revenue Code, 1879 by which the order dated 17.6.1997 passed by the Collector granting N.A. permission (permission to non-agricultural use of the land) to Najummuddin Gulamali Kagzi (petitioner of Special Civil Application No. 7495 of 1998) in respect of land admeasuring 1214 sq.mtrs. in Survey No. 210/2 and land admeasuring 911 sq.mtrs. in Survey No. 221 at Vyara. Both the lands admeasure in the aggregate 2125 sq.mtrs.

#. Najumuddin Gulamali Kagzi and other co-owners for whom Najumuddin holds a power of attorney in these petitions (the petitioner in Special Civil Application No. 7495/98 and respondent No. 3 in Special Civil Application No. 8295/98 - hereinafter referred to as "the original owner) had filed Regular Civil Suit No. 211/82 in the Court of the learned Civil Judge (J.D.), Vyara for a permanent injunction to restrain respondent No. 3 herein from disturbing the possession of the plaintiffs over the lands in question. During pendency of the said suit, there was interim injunction against dispossession of the plaintiffs. The learned Civil Judge dismissed the suit on 31.1.1984. The original plaintiffs, therefore, preferred an appeal which came to be partly allowed and the judgment and decree of the trial Court was set aside and the matter was remanded to the trial Court. The said Civil Suit is still pending. No interim orders are operating in the said Civil Suit after the order of remand.

The original owner applied to the Collector, Surat for N.A. permission in respect of the lands in question and by his order dated 17.6.1997 (Annexure "A") the Collector granted the N.A. permission for the purpose of constructing residential houses. Thereafter the plots were carved out from the lands in question and the plots were sold to the petitioners of Special Civil Application No. 8295 of 1998 (hereinafter referred to as "the purchasers") by registered sale deeds dated 14.7.1997. Their names were mutated in the revenue

records and the purchasers also applied for permission to the Vyara Municipality for construction of residential houses which was granted by the Municipality by order dated 12.12.1997.

In the meantime, on 1.10.1997 respondent No. 3 herein (defendant of Regular Civil Suit No. 218/82) filed revision application No. 7/97 before the Additional Chief Secretary for challenging the N.A. permission order dated 17.6.1997 on the ground that the civil suit was pending between the parties and, therefore, during pendency of the suit the Collector ought not to have granted N.A. permission. It appears that the original owner was not present at the time of hearing of the revision application, but the revisional authority considered his written submissions and thereafter held that in view of pending suits between the parties N.A. permission ought not to have been granted lest it should result into multiplicity of proceedings.

#. Special Civil Application No. 7495 of 1998 is filed by the original owner in whose favour the N.A. permission order dated 17.6.1997 was passed. Special Civil Application No. 8295 of 1998 is filed by the persons to whom the lands in question were sold by the owner on the strength of the N.A. permission order dated 17.6.1997. The lands in question were sold by the original owner to the petitioners of Special Civil Application No. 8295 of 1998 (hereinafter referred to as "the purchasers") by registered sale deeds dated 14.7.1997. In both these petitions, the order of the revisional authority is challenged on the ground that the original owner was not served with the notice of the date of hearing and that the purchasers were not at all joined as parties to the proceedings and also on merits on the ground that pendency of the civil suits could not have been made a ground for setting aside the order of the Collector granting N.A. permission in favour of the original owner.

#. At the hearing of these petitions, the learned counsel for the original owner has submitted that he was not served with the notice of hearing of the revision application. There is some controversy on this issue as according to respondent No. 3 the petitioner was served with the notice. That assertion made by respondent No. 3 in reply affidavit has been disputed in the rejoinder affidavit. It is, however, an admitted fact that although the original owner had pointed out in his written statement before the revisional authority that after getting the N.A. permission he had already sold

the lands in question to Premlataben Babubhai Shah and four others by registered sale deed dated 14.7.1997, the Additional Chief Secretary did not jot them as parties nor gave them any opportunity of being heard. The learned counsel for respondent No. 3 submits that in this view of the matter the order of the revisional authority can be set aside, the purchasers can be joined as parties to the revision and the matter may be remanded to the Additional Chief Secretary for fresh decision after giving an opportunity of hearing to all the parties.

#. However, the learned counsel for the petitioners in both these petitions has submitted that apart from Regular Civil Suit No. 218/82, there are two other suits which are filed by respondent No. 3 herein.

(i) Regular Civil Suit No. 149/97 has been filed by respondent No. 3 in the Court of the learned Civil Judge (S.D.), Vyara to restrain the original owner from transferring the lands in question and in the said suit the purchasers have also been joined as parties subsequently. In the said suit, respondent No. 3 herein had obtained an interim order of maintenance of status quo against the purchasers on 29.12.1997. The purchasers, therefore, preferred Misc. Civil Appeal No. 213/97 before the District Court, Surat which has by its order dated 1.1.1998 suspended the order of the trial Court till disposal of the appeal. Thus, no interim injunction is granted by the Civil Court against the purchasers putting up any construction on the lands in question after 1.1.1998.

(ii) Respondent No. 3 herein has thereafter filed Special Civil Suit No. 89/98 for specific performance of an alleged agreement to sell dated 11.8.1966 and also for a declaration that the registered sale deeds dated 14.7.1997 in favour of the purchasers were illegal and also for permanent injunction to restrain the purchasers from disturbing the possession of respondent No. 3 herein. The said suit was filed on 21.1.1998 and interim injunction application Exh. 5 is also filed therein. The said application is still pending and no order is passed by the Civil Court against the purchasers.

#. The learned counsel for the petitioners particularly the purchasers has, therefore, vehemently argued that

remanding the matter to the Additional Chief Secretary for hearing all the parties afresh would not serve any useful purpose as the Additional Chief Secretary has already taken a view that in view of pendency of the civil suits, the N.A. permission was required to be cancelled.

#. Having heard the learned counsel for the parties, it appears to the Court that since the Additional Chief Secretary has already taken the view that N.A. permission ought not to have been granted during pendency of the civil suits and in view of pendency of as many as three suits between the same parties in respect of the same parcels of land, instead of remanding the matter to the Additional Chief Secretary, it would be better to relegate respondent No. 3 to the remedy of seeking appropriate relief from the Civil Court as three suits are already pending between the parties and in any case the Additional Chief Secretary as a revenue authority cannot go into the merits of the disputes between the parties regarding title to the lands in question.

#. In view of the aforesaid discussion, both the petitions are allowed. The order dated 15.6.1998 passed by the Additional Chief Secretary (Appeals) in the Revenue Department of the State Government in revision application No. SSRD 7/97 is hereby quashed and set aside. However, this judgment shall not come in the way of respondent No. 3 herein Kantilal Chunilal Shah applying for appropriate relief before the Civil Court against the grant of N.A. permission. As and when such application is made, it will be decided by the Civil Court in accordance with law without being influenced by any observations made in this judgment.

##. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

February 19, 1999 (M.S. Shah, J.)

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